

The Montana Water Court Vocabulary*

*These definitions tend to be oversimplified and may not give all information regarding the term in question. They are intended to provide brief definitions of common terms used in the adjudication process. They are in no particular order.

Montana Water Court	Specialty court with exclusive jurisdiction over adjudication of all historical water rights in Montana. (Pre July 1, 1973)
Prior Appropriation	Water law doctrine followed in several western states. It is based on "First in Time is First in Right".
Decreed - Filed - Use	The three types of water rights that were available in Montana prior to 1973. Decreed - by district court; Filed - Notice of Appropriation; Use - based on actual diversion and beneficial use.
Reserved Rights	Rights reserved to an Indian tribe or federal agency based on a treaty or legislation. These rights are based on the act of Congress and do not require past use.
Winters Doctrine	U.S. Supreme Court doctrine acknowledging reserved rights for Indian reservations.
McCarran Amendment	Federal waiver of sovereign immunity over reserved rights for states with qualifying general stream adjudications.
Montana Water Use Act (1973)	Act revising water management in Montana. General adjudication of historical rights; DNRC permits for new rights, DNRC approval for all changes.
Statement of Claim	Filing to affirm an existing water right under state law. Parties were required to give specific information on several claim elements. The filing deadline was April 30, 1982.
Late Claim	Class of claims allowed by the legislature to mitigate the loss of water rights by parties who failed to comply with the April 30, 1982 filing deadline. Allowed with loss of priority.
Exempt Right	Instream and groundwater claims for stock and individual domestic use that are exempt from filing requirements. The 2013 legislature provided for the filing of exempt rights with conditions.
DNRC Claim Examination	Examination of all statements of claim by the DNRC following

specific rules adopted by the Supreme Court.

Issue Remark	Remarks placed on a claim during DNRC examination, indicating some potential issue with the claim. All remarks must be resolved as part of the adjudication process.
Preliminary Decree	A decree issued by the Water Court, following DNRC claim examination, for all state law based claims in a Basin.
Objection/Counterobjection	When a decree is issued, it is subject to Objections from other water users or the claimant themselves. Counterobjections are objections to claims owned by someone who objected to your claims.
Objection List	The Water Court issues a list of all claims in a Basin that have received an objection or appeared in a decree with issue remarks.
Notice of Intent to Appear	Request to be included in proceedings on a specific claim. Similar to an Intervention of right.
Water Master	Standing Master appointed by the Chief Water Judge to hear all objections and resolve all issue remarks on water right claims in a specific area of the state, typically a Basin.
Contested Case Hearing	Hearing, typically in front of a Master, to resolve all objections and issue remarks found on to a water right.
Pro Se Representation	The ability to represent yourself in proceedings before a court. The Water Court has its own criteria for this. After a Scheduling Order has been issued, only individuals can represent themselves.
Master's Report	When all issues on claims in a case are resolved, through an agreement or following a hearing, the Water Master issues a Master's Report with findings, conclusions and recommendations.
Order Adopting Master's Report	A Water Judge reviews all Master's Reports and can accept or reject the recommendations. If there are no objections, the report will be adopted. If there are objections the Chief Judge will exercise one of several available options.
Enforcement	When a defined area has been through the adjudication process, the

decree, as modified by objections, can be submitted to the district court for enforcement. The Water Court and DNRC prepare claim indexes for the defined area that are submitted to the District Court and used by a water commissioner.

Certification

Process by which a controversy can be certified to the Water Court from a district court or the DNRC so that the historical terms of water rights involved can be determined. Certification does not replace adjudication.

Request for Assistance

A Request for Assistance is a formal Water Court request for specific information and possibly recommendations from the DNRC.

Field Investigation

"Formal" site inspection by DNRC staff ordered by the Water Court with specific directions of the Water Court.

Benchmarks

Performance standards imposed by the legislature on DNRC claim examination.

Miner's Inch

Unit of measurement for water equal to 11.22 GPM. There are 40 miner's inches in a CFS.

Abandonment

Loss of a water right through a long period of nonuse with no valid explanation of that nonuse.

Marshaling

Combining all water rights owned by a party for use on all irrigated property held by that party.

Incremental Development

Expansion of a right over time to an extent that may warrant separate junior rights to reflect the expansion.

Bean Lake

Pothole lake southwest of Augusta that has been the subject of three Supreme Court decisions. The third case confirmed the validity of historical rights for fish, wildlife, and recreation with or without a diversion.